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REMARKS

This responds to the Office Action dated October 11, 2005.

The invention concerns a poultry wing separator, whereby the wings of the birds are held by the wing tip segments, with the outer surfaces of both left and right wings facing in the same direction. This means that the "elbow" joint that joins the primary segment and the intermediate segment of the wings will face in opposite directions for the left and the right wings. This enables the primary segments to be bent about an elbow guide toward the outside of the intermediate wing segment. The prior art does not disclose or teach this.

All of the claims of the application were rejected.

Applicant respectfully requests reconsideration of the rejections.

Claim Rejections - 35 U.S.C. § 102

Claims 14 and 15 were rejected under § 102(b).

Claim 14 includes the following language:

— advancing the wings in sequence along a processing path with the outside surfaces of the right wings facing one side of the processing path and *with the outside surfaces of the left wings facing in the same direction as the outside surfaces of the right wings*,
as the wings are advanced:
bending the primary segment of both right and left wings with respect to the mid-wing segment at the elbow joint *about an elbow guide*

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positioned on the outside surfaces of the poultry wings until the elbow joints are opened, and separating the tissue extending between the primary segments and the mid-wing segments at the elbow joints to expose the elbow joints and to separate the primary wing segments from the mid-wing segments.

Lindert et al. do not teach the italicized portions of claim 14. For example, Lindert et al. do not describe or illustrate the concept of both right and left wings having their outside surfaces facing the same direction during the separation process. This orientation of applicant's process provides the advantage of being able to bend the primary segments of both legs outwardly in the direction that more easily opens the joints between the primary and mid-wing segments.

Lindert et al. also do not teach bending of both the right and left wings with respect to mid-wing segments at the elbow joint about an elbow guide positioned on the outside surfaces of the poultry wings until the elbow joints are opened. Lindert et al. do not teach this. Lindert et al., instead of bending and separating the joints, cut the joints out of the work product. This is illustrated in Figs. 4 and 5 of Lindert et al. and is described in detail in the specification, at column 4, beginning at line 36. Even in the alternate embodiments disclosed by Lindert et al. in Figs. 9-18, *the joint is cut away from the rest of the wing*. The joint is not opened by Lindert et al. There is no teaching of opening the joints for the purpose of separating the segments of the leg in Lindert et al.

Further, Lindert et al. do not teach the concept of bending about an elbow guide positioned on the outside surfaces of the poultry wings until the elbow joints are opened.

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Nowhere does Lindert et al. teach or describe this bending function. Indeed, Lindert et al. cut the joint away from the rest of the wing. There is no teaching of opening the joints in Lindert et al.

Lastly, Lindert et al. do not teach the feature of separating the tissue extending between the primary segments and the mid-wing segments at the elbow joints. By contrast, Lindert et al. cut the elbow joint away from the remaining portions of the wings.

In sum, Lindert et al. not only do not teach the limitations of the claims, but do not provide a similar result or product.

Lindert et al. teach away from applicant's concept.

With regard to the examiner's reasons for the rejection of claims 14 and 15 under § 102(b), the examiner states that Lindert et al. disclose "-- partially suspending the poultry wing from its tip segment - see for example proximate 56 in Fig. 7A--." However, there is no disclosure in Lindert et al. of suspending the poultry wing from its tip segment. Indeed, Lindert et al. disclose the use of reception pockets 15 and 16 that grasp the mid-wing segment and primary segment of the wing structure on opposite sides of the intermediate joint, far displaced from the tip. The examiner refers to Fig. 7A as an example; however, the example given by the examiner illustrates the gripping pliers 55 reaching *below the tip and below the bone ball 41* so as to grasp the portion of the ulna and radius below the bone ball. This position of gripping the wing is displaced away from the wing tip.

Moreover, the purpose of Lindert et al. of grasping the bones of the intermediate wing segment as shown in Fig. 7A is to pull the bone longitudinally out of the meat. *This strips the meat from the bone.* This is a separate step that is completely independent of the bone cutting

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functions of Figs. 1-5 of Lindert et al. and is completely different from applicants claims that do not relate to stripping the meat from the bone.

The grasping of the wing tip is significant in applicant's invention in that it enables the single grasping of the wing away from the portions of the wing that are to be removed from the wing tip. The only thing left in the grasp of the equipment is the wing tip, and this happens only after the primary segments and the mid-wing segments of the wings have been separated from the wing tip.

The next reason for rejection by the examiner is that Lindert et al. teach the step of advancing the suspended wing segment along a processing path with the outside surface of the right poultry wings facing to one side of the processing path and the outside of the left poultry wings facing the same side of the processing path - see for example Figs. 1-7. However, *none of the figures and nothing in the specification teach this or even come close to suggesting this.*

The next reason for the rejection is that Lindert et al. disclose the step of bending the primary segment of the wing at the elbow joint laterally about an elbow guide - at 15, 16, 18, 19, positioned on the outside surface of the poultry wing until the elbow joint is opened - see for example Figs. 1-7. However, the elbow joint of Lindert et al. is never opened by bending. *Lindert et al. cut the joint out of the wing.* There is no basis in the specification nor in the drawings of Lindert et al. of bending the joint open. Elements 15 and 16 of Lindert et al. are the reception pockets that receive the wing on opposite sides of its joint, and the reception pockets are carried by the transport chains 19, with the reception pockets being connected to the transport chains by the holding means 18. This is adequately illustrated in Fig. 1A of Lindert et al. There

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is no teaching that this configuration of the apparatus of Lindert et al. would result in the bending as described in claim 14.

For example, claim 14 not only states that the bones are bent, but the bones are bent about an elbow guide positioned on the *outside surfaces* of the poultry wings until the elbow joints are opened. This is not taught by Lindert et al. Lindert et al. do not teach the concept of opening the elbow joint.

The next reason for the examiner rejecting claim 14 is that Lindert et al. teach the concept of "stretching the tissue extending between the primary segment and the mid-wing segment about the elbow joint - see for example Figs. 1-4, and separating the stretched tissue extending between the primary segment and the mid-wing segment at the elbow joint at a position that exposes the end of the bone of the primary segment and separates the primary segment from the mid-wing segment - see for example Figs.3-5."

Applicant submits that *Lindert et al. do not stretch the tissue about the elbow joint* (Lindert et al. cut the joint away from the wing), *do not separate the stretched tissue* (Lindert et al. remove the tissue with the elbow joint when the elbow joint is cut away), *and do not separate the primary segment from the mid-wing segment* (Lindert et al. leave the joint in tact when it is cut away from the wing so that parts of the primary segment and the mid-wing segment are never separated). The concept of Lindert et al. is to cut the joint out of the poultry wing, as shown in Figs. 4 and 5. Applicant's concept is to separate the joint so that it remains with the final product and it may be used as a handle when a person eats the meat away from the bone.

Accordingly, Lindert et al. does not anticipate claim 14.

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Claim 15 includes the following language:

--after the primary wing segment has been separated from the mid-wing segment, further including:

removing the mid-wing segment laterally from the tip segment, and
popping the bones of the mid-wing segment laterally from the tip segment,
such that the end of the bones of the mid-wing are exposed.

Claim 15 depends from claim 14 and, therefore, includes all of its limitations, and the limitations of the parent claim are significantly different from the applied reference.

Claim 15 adds the feature of removing the mid-wing segment laterally from the tip segment. There is no teaching of this by Lindert et al. Indeed, Lindert et al. apparently ignore the tip segment except for the statement that the tip segment is not to be used and is cut off in a preceding operation. (Col. 7, lines 25-27.) Further, claim 15 includes the feature of "popping the bones" of the mid-wing segment laterally from the tip segment. Nothing in Lindert et al. suggests this.

Claim Rejections - 35 U.S.C. § 103

Lindert et al. and Hazenbroek 5,976,004 are combined as a basis of rendering claims 1-9 and 11-12 unpatentable.

The rejection indicates that Lindert et al. do not disclose suspending the poultry wing from the tip segment. (Note: this is contrary to the examiner's statement concerning the rejection under § 102 that Lindert et al. *do* "partially suspend(ing) the poultry wing from its tip segment - see for example proximate 56 in Fig. 7A--.")

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Hazenbroek discloses a method and apparatus that pushes a single poultry product having only one bone longitudinally through a stripper element, such as an apertured stripper disk 24 (Fig. 4) or pulling the poultry product through a pair of stripper blades 79 and 80, so as to partially strip the meat from the bone. The Hazenbroek device discloses poultry parts having only one bone (or possibly parallel bones connected at opposite ends to mutual joints). For example, Fig. 13 of Hazenbroek shows a meat stripper module 70 that can have a poultry thigh (with one bone) wedged at its joint into the crotch of the carrier fork 100, and the stripper blade 79 and 80 can be operated to reach up and engage the meat adjacent the carrier fork and then move downwardly to strip the meat from the bone. This is described in more detail in col. 5, beginning at line 41. Accordingly, Hazenbroek does not disclose the step asserted by the examiner, of suspending poultry wings from the tip portion.

Even if Hazenbroek could be used for suspending poultry wings from the tips thereof, *it is not understood how Hazenbroek could possibly be combined with Lindert et al.* For example, Lindert et al. teach the concept of holding the wing segments while the intermediate joint is cut away. If Hazenbroek is added to Lindert et al., it would be redundant and a wasted effort to add the feature of holding the tips of the wings of Lindert et al. when the segments of the wings are already held by the reception pockets 15 and 16. However, if the Hazenbroek carrier fork 100 is substituted for the reception pockets 15 and 16 (Fig. 1A of Lindert et al.) and is used to grasp the wing tip (not numbered in Lindert et al.), then the wing of Lindert et al. would not be carried with such accuracy and firmness as to be treated by the following cutting knives of Fig. 3. For example, suspending the poultry wing of Lindert et al. by its tip would likely cause the poultry wing to tilt when it engages the cutting knives of Fig. 3, and not likely result in the product being successfully cut so as to

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remove the joint between the wing segments. There wouldn't be enough control applied to the wing to force the wing into and through the cutting knives.¹ The wing would tilt at the tip of the wing and move over the cutting knives instead of moving through the cutting knives.

As set forth above, there is no suggestion that Hazenbroek would be combined with Lindert et al. The Federal Circuit has required:

-- a showing that an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would select the various elements from the prior art and combine them in the claimed manner. In other words, the examiner or court must show some suggestion or motivation, before the invention itself, to make the new combination. (Ruiz v. A.B. Chance Co, 357 F.3d 1270, 69 USPQ2d 1686, 1690 (Fed. Cir, 2004).

Claim 1 includes the following language:

--suspending the poultry wing from its tip segment,
advancing the suspended wing along a processing path with the outside surface of the
poultry wing facing one side of the processing path,
as the wing is advanced:
bending the primary segment of the wing at the elbow joint laterally about an
elbow guide positioned on the outside surface of the poultry wing until the elbow
joint is opened,

¹ Since the Office does not have ready access to poultry processing equipment, an example of the lack of control that would be created by substituting the Hazenbroek carrier fork 100 for the reception pockets 15 and 16 of Lindert et al. is: suspending a pencil at one end and then moving it laterally toward an object, such as the edge of a desk. The pencil will readily tilt and its lower end will slide up over the edge of the desk. On the other hand, if the pencil is held at both ends as taught by Lindert et al. and is moved into the edge of the desk, it does not tend to slide up over the edge of the desk.

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as the elbow joint is opened, *stretching the tissue extending between the primary segment and the mid-wing segment about the elbow joint,*
separating the stretched tissue extending between the primary segment and the mid-wing segment at the elbow joint at a position that exposes the end of the bone of the primary segment and separates the primary segment from the mid-wing segment,
such that the tissue about the bone end of the primary segment tends to retract from about the bone end and leave the bone end exposed.

As set forth above, the references applied in the office action do not disclose the above noted steps.

Claim 2 Includes:

--advancing the wing with the elbow joint extending forwardly in the processing path.

Lindert et al. do not disclose this. For example, Fig. 1A shows the arrows indicating movement of the wing in the direction that is opposite to that set forth in the above claim. This is repeated in Fig. 3 of Lindert et al. This is again repeated in Figs. 4 and 5 of Lindert et al. There is no other direction arrow in Lindert et al. and no description of the direction as set forth in applicant's claim 2.

Claim 4 of the application includes:

-- suspending the poultry wing from its tip comprises wedging the tip segment into a slot of a shackle.

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Neither of the applied references show this. Hazenbroek discloses the concept of wedging the joint end of a poultry thigh into the crotch of a carrier fork 100 (Fig. 13). However, the Hazenbroek poultry part is a part with no joints and no parts that bend with respect to one another. In contrast, applicant is suspending a poultry part that has multiple bones in connection at joints to one another. Hazenbroek does not include the step of separating the segments of the wing at the joints. Neither do Lindert et al.

Claim 5 includes:

Claim 5 of the application includes:

-- placing the mid-wing segment of the wing in contact with the rotary guide, advancing the wing in unison with and about the rotary guide, and performing the steps of bending, stretching and separating the wing as the wing advances with the rotary guide.

This claim was rejected as unpatentable over Lindert et al. in view of Hazenbroek. However, there is no correlation between the two patents and no suggestion or motivation to combine these patents. The use of Hazenbroek technology in Lindert et al. does not provide, even with hind sight, a logical or workable product. Neither of the references teach the logic of modifying Lindert et al. to perform the steps of bending, stretching and separating the wing as the wing advances with a rotary guide. Hazenbroek's thigh can't be bent without breaking its bone. Lindert et al. do not teach bending, but teach cutting the joint away.

Dependent claims 6-8 have the same situation, in that there is no suggestion that Lindert et al. could be modified as proposed. Lindert et al. do not include the concept of bending, but instead use the opposite solution of cutting away the joint of the two bones. *This teaches away*

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form applicant's invention. Applicant uses the another technology of opening the bone at its joint, thereby not losing the meat that normally extends about the bone. It can be seen from Fig. 5 of Lindert et al. that the joint 14 of the poultry wing has outer connection skin 24 surrounding the joint that is cut out so that the process loses the outer connection skin 24. This is not likely in applicant's invention.

Claim 9 includes:

--advancing the mid-wing segment and the tip segment along a second processing path,
as the mid-wing segment and tip segment are advanced along the second processing path:
compressing the wing tip segment,
forcing the mid-wing segment laterally with respect to the tip segment, and
popping the bones of the mid-wing segment laterally from the tip segment,
such that the end of the bones of the mid-wing are exposed.

This claim describes the activity performed on the work product after the primary wing segment has been removed from the wing. It includes the step of forcing the mid-wing segment laterally with respect to the tip segment and popping the bones of the mid-wing segment laterally from the tip segment, such that the ends of the bones are exposed. Neither of the applied references remotely teach or make obvious this concept. Neither reference sets forth the step of forcing the mid-wing segment laterally with respect to the tip segment and popping the bones of the mid-wing segment laterally from the tip segment. Indeed, *the meat portion of the wing*

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segment of Lindert et al. is scraped away from the end of the bone. By contrast, applicant bends the wing tip laterally with respect to the mid-wing, which results in a popping of the bones of the mid-wing laterally from the wing tip segment. This lateral popping tends to retain the meat on the mid-wing segment of the wing. This is illustrated in Fig. 12 of applicant's drawings.

Claim 12 includes:

Independent claim 12 includes:

suspending the poultry wings from their tip segments,
advancing the suspended wings in sequence along a processing path with the
outside surfaces of the right wings facing one side of the processing path and with
the outside surfaces of the left wings facing in the same direction as the outside
surfaces of the right wings,

as the wings are advanced:

bending the primary segment of both right and left wings with respect to
the mid-wing segment at the elbow joint about an elbow guide positioned on the
outside surface of the poultry wings until the elbow joints are
opened, and

separating the tissue extending between the primary segments and the
mid-wing segments at the elbow joints to expose the elbow joints and to separate
the primary wing segments from the mid-wing segments.

The references do not disclose the feature of advancing the suspended wings in sequence along the processing path with the outside surfaces of the right wings facing one side of the

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processing path and with the outside surfaces of the left wings facing in the same direction as the outside surfaces of the right wings. This feature allows the primary segments of all the wings to be bent outwardly, thereby taking advantage of more easily opening the joint between the primary and mid-wing segments. Neither reference teaches this concept, and the combination of the references do not make applicant's invention obvious as claimed.

The references do not teach the concept of bending the primary segment of both the right and left wings about an elbow guide positioned on the outside surface of the poultry wings until the elbow joints are opened.

Again, Lindert et al. teach the concept of cutting away the joint between the segments of the poultry product instead of opening the joint. Hazenbroek is involved with a single segment, not with multiple segments that are joined together at joints. Accordingly, *there is no suggestion or motivation that the primary reference could be modified by the secondary reference to teach applicant's claimed invention.* This would be hind sight reconstruction.

The Office Action includes responses to arguments.

The examiner's responses include: that applicant has not placed these differences, cutting the elbow joint from the wing of the bones, into the claim language. However, applicant notes that claims 1 and 12, the independent claims addressed by the examiner, both include the bending steps, whereby the joint is bent, not cut.

It is noted that it is improper for applicant to be required to disclaim a negative, by stating that applicant "does not cut the elbow joint of the wing from the bones." To the contrary, applicant discloses the concept of bending, which is different from cutting.

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The examiner argues that Lindert et al. disclose a tip segment of the wing. Applicant agrees. However, Lindert et al. do not disclose the concept of suspending by the tip.

The examiner argues that Lindert et al. disclose bending the wing at the elbow joint as seen in Figs. 1-6. However, this is simply not disclosed in Lindert et al. Further, applicant claims bending the wings about an elbow guide positioned on the outside surface of the poultry wings until the elbow joints are opened. This is not obvious in view of the applied references.

The examiner argues that Lindert et al. disclose stretching the tissue between the segments of the wing as seen in Figs. 1-6, where the forces of the components of the device such as at 15-22, acting on the wing, causes portions of the wing to stretch. However, the claims set forth the step of separating the tissue extending between the primary segments and the wing segments at the elbow joints. Lindert et al. do not do this. Lindert et al. cut out the joint. This teaches away from applicant's claims.

The examiner argues that Hazenbroek '004 discloses suspending portions of a carcass from the tip segment as seen in Fig. 13 and that this feature may be combined with Lindert et al. However, if Hazenbroek's carrier fork is added to Lindert et al, the combined device would still not teach the features of the claims, of the bending outwardly of both the left and right wings, of bending about the guide, the popping of the bones, and the many other features described above. And there is no suggestion that Hazenbroek could be combined with Lindert et al. to have a system that would operate by holding the tip of a poultry wing as the joint is cut out. Even if there were such suggestion, the combined product would not function as claimed. For example, where is the "bending about an elbow guide" in the combination of references? How would the combined

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references make obvious applicant's step of advancing the suspended wings with the outside surfaces of the right and left wings facing the same way?

The examiner argues that the process of making the end product (and not the end product) is being claimed, and applicant's argument that the end product is different is not persuasive. Applicant agrees that the end product is not directly claimed, but this argument still is cogent in the respect that not only are the process steps asserted by applicant different from the prior art taken individually or in combination, but that a different result is evolved from the new process. The new result is an important aspect of the invention. As stated by the court in Ruiz, supra:

In making the assessment of differences, section 103 specifically requires consideration of the claimed invention "as a whole." Inventions typically are new combinations of existing principles or features (citing cases). The "as a whole" instruction in title 35 prevents evaluation of the invention part by part. Without this important requirement, an obviousness assessment might break an invention into its component parts (A+B+C), then find a prior art reference containing A, then another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hind sight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way *to achieve a new result—often the very definition of invention*

The examiner argues that Lindert et al. disclose the elbow extending forwardly or rearwardly. However, this is not supported in the specification or in the drawings and the examiner has not made reference to the parts of Lindert et al. that makes such a teaching. The examiner cannot just assume that the Lindert et al. poultry part can be oriented in either direction without a

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statement in Lindert et al. that confirms this. There is no stated reason in Lindert et al. *why* Lindert et al. would orient the poultry parts in different directions.

The examiner argues that Hazenbroek '004 discloses suspending the carcass wing from its tip, as seen in col. 1, lines 15-22. However, this is absolutely not disclosed in the section recited by the examiner.² From a reading of that portion of the '004 patent as reproduced below, it can be seen that there is no mention of suspending an item 100 via a tip portion of the carcass. The words "tip" and "suspending" are not even used in this section.

The examiner argues that as seen in Fig. 13 of Hazenbroek '004, the bending, stretching, and separating is performed via the actions of the device of Fig. 13 acting on the carcass portions. However, Fig. 13 simply discloses the carrier fork 100 that receives the enlarged bone end of a poultry thigh, or even the end of one section of a wing, and the meat is later stripped by the stripper blades 79 and 80. This concept is different from placing the mid-wing segment of an assembled wing in contact with a rotary guide and performing the steps of bending, stretching, and separating the wing segments from one another. It should be considered that these steps of bending, stretching, and separating are more completely described in the parent claim which states:

--*bending* the primary segment of the wing at the elbow joint laterally about an elbow guide positioned on the outside surface of the poultry wing until the elbow joint is opened,

as the elbow joint is opened, *stretching* the tissue extending between the primary segment and the mid-wing segment about the elbow joint,

² Col. 1, lines 15-22: " This invention relates to a partially deboned poultry product, such as the leg, thigh, or wing of a chicken, which has the meat partially stripped away from the bone, with the product being cooked so that the bone remains exposed and functions as a handle for eating the product. Further, the invention relates to the method and apparatus for producing the product."

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separating the stretched tissue extending between the primary segment and the mid-wing segment at the elbow joint--.

None of these steps are disclosed in Hazenbroek '004.

With regard to claim 6, the examiner argues that the Hazenbroek reference discloses moving a positioning block - at 79-80, by advancing a wing-suspended - at 100, with a rotary guide being either items 85-87 or the conveyor apparatus as seen in Fig. 13.

However, the issue is not so much what Hazenbroek discloses, but how that technology can be properly added to Lindert et al. without the use of hind sight. For example, Hazenbroek does not involve the separation of wing parts. Hazenbroek involves stripping meat longitudinally from a bone. Lindert et al. must separate the multiple segment product by cutting out the joint so that it can then strip like Hazenbroek. In other words, the cut apart wing segments of Figs 1-5 of Lindert et al. might find their way to the Hazenbroek stripper so the meat could be stripped therefrom, but there is no suggestion that the Hazenbroek stripper can be *combined* with Lindert et al. There is no suggestion of this in either of the applied references.

With regard to claim 8, the examiner argues that Lindert et al. disclose the bending of a wing about an elbow joint. However, claim 8 states that the primary segment is bent about the elbow guide *until the elbow joint is opened and separated*. Accordingly, a de minimous bending of the wing by Lindert et al. does not open the joint until it is opened and separated.

With regard to claim 9, applicant disagrees with the examiner that Lindert et al. disclose the *popping of the bones of the mid-wing segment laterally* from the tip segment. This is simply not

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disclosed in Lindert et al. Indeed, Lindert et al., at best, scrapes the meat from the bones, and there is no "popping" of the bones from the meat.

Conclusion

Applicant submits that the claims of the application are in condition for allowance in that they adequately describe over the references of record. The applied references simply do not anticipate or make obvious the subject matter as set forth in the claims. Indeed, the combination of Hazenbroek '004 with Lindert et al. does not make the revised Lindert et al. combination workable, and there is no suggestion or motivation to create the combination. This combination is made by the forbidden hind sight reasoning (Ruiz, supra).

It has long been the law that prior art may not be gathered with the claimed invention in mind. *Pentec, Inc. v. Graphic Controls Corp.*, 776 F. 2d 309, 227 USPQ 766 (Fed. Cir. 1985). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention. *In re Fine*, 837 F. 2d 1071, 5 USPQ 2d, 1596, 1600 (Fed. Cir. 1988).

Favorable reconsideration of this application is courteously solicited.

Respectfully submitted,


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